NOTES OF CASES.

Arson—Property Must Be That of Another.—In Haas *v.* State, 132 N. E. 158, the Supreme Court of Ohio held that where the owner procures another to burn his (the owner's) building, or consents to the burning thereof, such burning is not a malicious burning of the property of another in violation of the statute relating to arson.

The court said in part: "In a situation in all essentials, facts and statute, like to the one at bar, the Supreme Court of Massachusetts, in the case of Commonwealth *v.* Makely, 131 Mass. 421, held:

" 'An indictment on Gen. Sts. c. 161, § 1, for burning the dwelling house of another, is not sustained by proof that the defendant burned the house by the owner's procurement, to enable him to obtain money from an insurer.'

"The Supreme Court of Maine, in the case of State *v.* Haynes, 66 Me. 307, 22 Am. Rep. 569, held:

" 'The owner of a dwelling house, who burns it in the nighttime, is not therefore liable to an indictment for arson, either by the common law, or by R. S. c. 119, § 1. Nor, when the house is insured, for the benefit of such owner, for the purpose of defrauding an insurance company, liable to an indictment under R. S. c. 119, § 1.'

"The Supreme Court of Tennessee, with a statute similar to our section 12433, in the case of Roberts *v.* State, 7 Cold. (47 Tenn.) 359, held:

" 'Neither at common law, nor under section 4666 of the Code, is it arson for a man to burn his own house, or to procure it to be done, even for the purpose of injuring an insurer by the burning thereof; and an agent who commits an act, can, upon general principles, be guilty of no higher or greater offense than the principal would have been had he committed the act himself.'

"The Supreme Court of Alabama, with a statute similar to ours, in the case of Heard *v.* State, 81 Ala. 55, 1 South. 640, held:

" 'The willful burning of a building insured against fire, with intent to charge or injure the insurer, is a statutory offense punishable as prescribed by the statute (Code, § 4349); but, on an indictment under section 4347 (Code 1876), a conviction cannot be had on proof that the defendant burned the house at the instance of the owner, with intent to enable him to obtain the insurance.'

"The Court of Appeals of New York, in the case of Dedieu *v.* People, 22 N. Y. 178, held:

" 'Under an indictment charging only arson in the first degree, the prisoner cannot be convicted of the third degree of arson, in willfully burning goods with intent to prejudice an insurer of them.'

"The Supreme Court of South Carolina, in the case of State *v.*

Sarvis, 45 S. C. 668, 24 S. E. 53, 32 L. R. A. 647, 55 Am. St. Rep. 806, held:

"'A person cannot be convicted of arson for burning his own dwelling house either at common law or under Criminal Statutes 1893, § 140, even when burning is done for purpose of defrauding an insurance company.'

"The Supreme Court of Missouri, under a statute similar to ours, in the case of State *v.* Greer, 243 Mo. 599, 147 S. W. 968, Ann. Cas. 1913C, 1163, held:

"'Under the statute, if the building is not insured and the owner burns it, or if a defendant, who has no interest either in the building or its contents, assists the owner to burn it, no crime is committed, for the burning of uninsured property becomes a crime only when done by some one other than the owner. Such burning becomes a crime only because of an intent to defraud the insurer.'"

Attorney and Client—Disbarment for Lack of Fidelity to Client.— In the case of In re McDermit, 114 Atl. 144, the Supreme Court of New Jersey held that an attorney may be disbarred for a sufficiently gross failure of duty to his client.

In this case McDermit appeared as attorney for one accused of a capital offense, and after conviction with death sentence sued out a writ of error as of right, the return day of which was three days after opening of term of Court of Errors and Appeals, but failed to comply with the rule requiring application to such court on first day of term for such order as might be necessary for a speedy hearing, whereby, except for grace of the court, writ could have been dismissed. But as the case was a capital one the Court of Errors and Appeals, out of mere grace, examined into the record and heard argument, directing that proceedings be had against the attorney for his neglect.

In the present disbarment proceedings the Supreme Court was of opinion that McDermit's failure to perfect the appeal was a deliberate attempt on his part to secure more money from the wife of his client, and because of this element of moral turpitude in connection with the gross failure of duty to his client ordered that McDermit's name be stricken off the rolls.

The court said in part: "We are persuaded that the real object of counsel was to drive his client to procuring more money to be paid to him, from their own resources, knowing that money advanced by the public for necessary expenses of the administration of justice would not be paid as counsel fees to counsel employed by the prisoner and his wife. His aim was to force the payment of money to himself by working on the fears of the prisoner and his wife. In the case already referred to, In re Frank M. McDermit, 63 N. J. Law,